IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 438 OF 2001

GOVIND KONDIBA TANPURE ..PETITIONER

V/s.

The State of Maharashtra .. Respondent.

Shri Nitin Jamdar for the Petitioner.
Shri K.V.Saste, APP for Respondent.

WITH

CRIMINAL APPLICATION NO. 4453 OF 2003

The State of Maharashtra ..Appellant.

V/s.

Govind Kondiba Tanpure ..Respondent.

Shri K.V. Saste, APP for Appellant.
Shri Nitin Jamdar for Respondent.

CORAM : A.M.KHANWILKAR, J.
DATED : 06.10.2004

PC :-

. Heard the learned counsel for the parties.

2. The Petitioner, who was working as an Agricultural Assistant, is being prosecuted for offence punishable under section 13 (1)(e) read with Section 13(2) of the Prevention of Corruption Act,

1988, for possession of assets disproportionate to the known sources of his income. F.I.R. came to be lodged against the Petitioner, being No. 49/2000 with Bhor Police Station. The FIR spells out the income of the petitioner from the known sources of the petitioner and after deducting the legitimate amount towards expenses, for the term from April, 1981 till December, 1998, alleges that the petitioner is unable to explain the disproportionate assets to the extent of Rs. 74,046/-. However, in the latter part of the first information report, reference is made to the income of the petitioner in the year 1993, 1994, 1995, 1995 and 1997 respectively. It is observed that during the said period the assets disproportionate to the known sources of income of the petitioner were to the extent of Rs. 1,05,260/-, Rs. 2,33,624/- Rs. 2,92,831/-, Rs. 2,65,236/- and Rs. 1,31,154/- respectively. The FIR then proceeds to record that the petitioner was possessing assets, disproportionate to the known sources of income in the year, 1981 to December, 1995 in the sum of Rs.2,92,831/- for which reason, offence under sections 13(1)(e) r.w.Section 13(2) of the Act, is being registered. After registration of the first information report, the Petitioner approached this court by way of present

writ petition.

3. According to the Petitioner, the FIR concedes the position that for the period from April, 1981 till December, 1998, the assets disproportionate to his known sources of income found with him was only to the extent of 3.86%, which was less than 10% and in such case, no presumption could be drawn that offence has been committed by the petitioner under the provisions of the Prevention of Corruption Act. To buttress this submission, reliance was placed on the decision of the Apex Court, reported in (1977) I SCC -816 in the case of Krishnanand vs. State of M.P.. The contention of the petitioner is reinforced by the contents of the first information report. In this background, this court admitted the matter on 10th February, 2003. During the pendency of this petition, the Respondent filed Application being Criminal Application No. 4453/2003 for vacating the interim relief granted, while admitting the petition. In this Application, it is stated that the basis on which the petitioner has questioned the first information report is incorrect, as investigation would reveal that the petitioner possesses assets disproportionate to his known sources of income far in excess of 10%. Instead of deciding

this application, I thought it appropriate to take up the writ petition for hearing as contentions in both the proceedings would be overlapping. The learned APP fairly accepted that suggestion. Accordingly, the matter has been heard at length and I have perused the record of the case with the assistance of the learned counsel appearing before me.

4. Having considered the relevant record and submissions, I have no hesitation in taking the view that this petition should succeed. In the first place, it needs to be mentioned that the calculation arrived at for assuming that the petitioner has assets disproportionate to his known sources of income, is reflected in the first information report itself. It is fairly accepted by the learned APP that there was no other material available at the time of registration of first information report. In that sense, the matter will have to be considered on the basis of allegations contained in the first information report alone. The first information report, discloses the known sources of income of the petitioner from April,1981 till December, 1998 and after deducting the legitimate expenses, it has been found that the petitioner was having assets

disproportionate to his known sources of income to the extent of Rs. 74,046/-only. The FIR clearly concedes the position that this amount will be 3.86% of the known sources of income. If it is so, applying the principle expounded by the Apex Court in Krishnanand's case, (Supra), the petition ought to succeed as the Apex Court has held that if the discrepancy is less than 10%, the benefit should be given to the employee as there can be no statutory presumption in such a case. However, to get over this position, the learned APP contends that the specific periods, which are specified in the first information report, namely, 1993, 1994, 1995, 1996 and 1997, the assets disproportionate are far in excess of 10% to the known sources of income of the petitioner during such period and this position, has been stated in the first information report. Indeed, it is open to the authorities to select the specific period to proceed against the employee under the provisions of the Prevention of Corruption Act. But in the present case, the complaint is lodged against the petitioner in respect of period between April, 1981 to December, 1995, specifically with regard to the disproportionate assets possessed by the petitioner to the known sources of his income upto April, 1981 to December,

1995. In that sense the subsequent period of 1996 and 1997, cannot be reckoned for consideration in the case at hand. In so far as, the period before April, 1981 to December, 1995 is concerned, the allegation against the petitioner is that the assets possessed by the petitioner were disproportionate to the extent of Rs. 2,96,831/-. However, this statement made in the penultimate paragraph of the first information report, which is the basis to proceed against the petitioner, does not reconcile with the calculation given in the earlier part of the first information report. In the earlier part of the first information report for the year April, 1981 till December, 1998, the disproportionate assets possessed by the petitioner are quantified as Rs. 74,046/- only. In other words, it is obvious that no explanation is forthcoming as to how for the lesser period upto December, 1995 , the disproportionate assets would increase to Rs. 2,92,381/-. The learned APP is not in a position to explain this discrepancy or justify the same from the record of the case. If it is so, the first information report, as lodged, even taking every allegation therein at its face value, do not prima facie constitute any offence or make out a case against the accused petitioner. In such

circumstances, in the interest of justice, the court has no option but to quash the first information report, lodged against the petitioner. During the course of hearing, it was suggested to the learned APP that it will be open to the Respondent to either withdraw or ignore the present first information report and proceed against the petitioner afresh, if so advised, in the event there is sufficient material to support the allegations against the petitioner. However, the learned APP on instructions, informs that the department is not inclined to take recourse to that option. It is in this backdrop, I had no option but to proceed to decide the matter on its own merit.

5. For the aforesaid reasons, this petition succeeds in terms of prayer clause (b). Rule made absolute.

6. In view of this order, Criminal Application No. 4453/2003 is also disposed of.

7. Order accordingly.

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